

1999

North Dakota Office of State Tax Commissioner

Income tax update

News and developments for tax practitioners

Year-end edition

October 1999

*A publication
of the
Income and Oil
Taxes Division*

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Tax Commissioner*

Change to 2-page format one of several changes made to short form

In 1981, a dark green card, 3 1/2" high by 8 1/2" wide, made its initial appearance in the individual income tax booklet. Formally dubbed Form 37-S, it has come to be known by most as simply the "short form." While its size and make-up have changed due to legislative changes and practicality, its use by close to 95% of all individual filers has remained a constant.

1999 legislative changes and the addition of a refund direct deposit option (*see article on page 3*) have again resulted in changes to both the structure and content of Form 37-S (Short Form). This article covers these changes which all tax preparers need to be aware of for the upcoming tax season.

Adjustment Schedule (Form 37-S)

The most noticeable change to Form 37-S is the removal of the lines for the adjustments and ratio calculation applicable to nonresident filers and those resident filers having an allowable adjustment. A new supplemental schedule, called the *Adjustment Schedule (Form 37-S)*, was created for these items.

The majority of short form filers (about 85%) is not affected by this change. These filers do not have to complete nor attach the new supplemental schedule to their returns. They will simply multiply their federal income tax liability by 14% on the face of Form 37-S.

(More on Short form changes on page 2)

Tax due returns will be accepted through Fed/State electronic program

For the 1999 tax year, tax due returns will be accepted through the Federal/State Electronic Tax Filing Program. If an individual files under this program and has tax due, the payment (by check or money order) must be submitted separately with a paper payment voucher. The voucher, Form 37-SV, will be printed by the same computer software that is used to electronically file the return. The payment and voucher must be mailed by the due date of the return which, for most filers, is April 15.

An individual is eligible to file a North Dakota income tax return electronically if the individual:

1. Electronically files the federal return;
2. Files Form 37-S (Short Form); and,
3. Does not claim any state income tax credits (except withholding and estimated taxes).

Both tax due returns and refund returns are accepted under the electronic filing program. If applicable, Schedule NR (for nonresident

persons) are also accepted.

Intuit and Tax & Accounting Software are joining the ranks of companies supporting North Dakota in their Federal/State electronic filing software for the 1999 tax year.

If you have questions about the Federal/State Electronic Tax Filing Program, contact:

! Donna Kohler (701)328-3102
dkohler@state.nd.us
! Chuck Picard (701)328-3129
cpicard@state.nd.us

From within North Dakota, you may call toll free at 1-800-638-2901 (*wait for receptionist and ask for Donna or Chuck*).

1999 income tax
order form enclosed

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Short form changes *continued from page 1*

The new Adjustment Schedule (Form 37-S) must be completed and attached to Form 37-S by:

1. All nonresident filers; and,
2. Only those resident filers who have one or more allowable adjustments.

The above two groups of individuals who are affected by this change comprise only about 15% of all short form filers.

Federal income tax liability

Several substantive changes were made by the 1999 legislature to the definition of the federal income tax liability which is the starting point for the calculation of the tax on Form 37-S.

First, the definition (*contained in subsection 5 of section 57-38-30.3*) was rewritten to simplify its content and structure and to clarify what is included in the federal income tax liability for short-form purposes.

Second, the federal investment tax credit may no longer be used to reduce the amount of the federal alternative minimum tax that must be included in the federal income tax liability for short-form purposes. This change is attributable to a change in federal income tax law that altered the way federal income tax credits affect the computation of the federal alternative minimum tax.

And, third, in the case of a nonresident filer, the following federal taxes are no longer included in the federal income tax liability for short-form purposes:

1. Tax on a lump-sum distribution [I.R.C. § 402], if the amount of the distribution is exempt from North Dakota income tax. This amount (*line 38, 1999 Form 4972*) is included in the amount on line 40, 1999 Form 1040;

2. Tax on excess contributions to an IRA, medical savings account, and certain I.R.C. § 403(b) and annuity contracts [I.R.C. § 4973(a)]. This amount (*which is the total of lines 17, 25, 33 and 41, 1999 Form 5329*) is included on line 53, 1999 Form 1040; and,
3. Tax on excess accumulations in a qualified retirement plan [I.R.C. § 4974(a)]. This amount (*from line 45, 1999 Form 5329*) is included on line 53, 1999 Form 1040.

The removal of the above three taxes in the case of a nonresident filer addresses certain discrimination and constitutional questions attributable to the lack of income representation in the ratio calculation required to determine an adjusted federal income tax liability.

The worksheet provided in the Form 37-S instructions on page 5 of the individual booklet has been revised to incorporate all of the changes to the definition of the federal income tax liability.

Composite filer check-off

Starting with the 1999 Form 37-S, one of the composite return filing procedures has been changed. To indicate that the return is a composite return, the box next to "Dept. use only" in the shaded area in the upper right-hand corner of Form 37-S must be checked. *For more information about composite filing by partnerships and S corporations, obtain the **Income Tax Guideline: Composite Filing Method**.*

Refund direct deposit

A new line (*line 13 of the 1999 Form 37-S*) has been added for the refund direct deposit option.

Instructions for completing the new line have been added to the Form 37-S instructions on page 5 of the individual booklet.

Renaissance zone tax incentives

Two new items have been added to Form 37-S for 1999 due to the enactment of the North Dakota Renaissance Zone Act. On the face of Form 37-S, a new space has been added to the tax credit grouping (*on line 3*) for the new renaissance zone income tax credits. And, on the new Adjustment Schedule (Form 37-S) for 1999, a new line (*see line 8*) has been added to the adjustments allowed on Form 37-S for the new renaissance zone income exemptions. ***See the article on page 3***

Short method starting point for estates and trusts also affected

The changes to the definition of the federal income tax liability under N.D.C.C. § 57-38-30.3(5) affect not only individuals who use Form 37-S, but also estates and trusts using the short method on Schedule 1, Form 38.

The federal investment tax credit may not be used to reduce the amount of the federal alternative minimum tax included in the federal income tax liability for purposes of the short method on Form 38.

Also, in the case of a nonresident estate or trust, the tax on a lump-sum distribution (from Form 4972) and the tax on excess accumulation in a qualified plan (from Form 5329) are not included in the federal income tax liability for short method purposes.

Income tax update is a publication of the Income and Oil Taxes Division, North Dakota Office of State Tax Commissioner, State Capitol, 600 East Boulevard Avenue, Bismarck, ND 58505-0599.

It is published annually in October and after each legislative session in June. It is intended for tax professionals and other persons interested in developments, updates and other information about North Dakota's income and financial institution tax laws, rules and administrative policies.

It is mailed free-of-charge to all persons on the Division's practitioners' mailing list. To get on the list, call (701)328-3450 or (toll free within North

Direct deposit option made available to short form filers

Starting with the 1999 tax year, individuals who use Form 37-S may request that their refunds be directly deposited into their checking or savings account. This option, which taxpayers have requested, is another of the changes that the Office of State Tax Commissioner is implementing to take advantage of current electronic technologies. While North Dakota is already noted for its quick turnaround on refunds, this option will put refunds in taxpayers' hands even faster than before.

A new line (line 13) has been added to Form 37-S, and specific instructions for completing the new line have been included in the 1999 individual income tax instruction booklet.

If you have a question about the new direct deposit option, see page 4.

It's time to order the '99 income tax forms

Enclosed with this edition of the *Income tax update* is the 1999 income tax order form.

One change you should note is the addition of the new Adjustment Schedule (Form 37-S). (See article on page 1 covering this new supplemental schedule to Form 37-S.)

Please order only what you think you'll need for the upcoming tax season. This consideration helps keep printing costs to a minimum. If you don't receive your order in a reasonable amount of time, please do not submit a new order. Instead, you may check on your order by calling (701)328-3017. If calling from within North Dakota, use our toll-free number 1-800-638-2901 (but do not select any of the five options—wait for the receptionist and ask for extension 8-3017).

Don't forget that in a pinch, forms and instructions, guidelines and other information can be downloaded from our Internet web site. The address is: www.state.nd.us/taxdpt.

Renaissance zone tax incentives created for income and financial institution tax filers

The North Dakota Renaissance Zone Act ("Act"), enacted by the Fifty-sixth Legislative Assembly (1999 Session), authorizes a North Dakota city to apply to the state for designation of a portion of the city as a "renaissance zone." Property, income and financial institution tax incentives are available to taxpayers under the Act for investing in approved zone projects. This article provides a brief look at the incentives available for income and financial institution tax purposes.

Income exemptions

The following two incentives are in the form of an adjustment or deduction:

- ! Five-year business income exemption for purchasing or leasing real property for use in the taxpayer's business, or for making a major improvement to the taxpayer's existing business real property.
- ! Five-year investment income exemption for the purchase of residential or commercial real property solely for investment purposes.

Zone project. The purchase, lease or improvement of the business real property must be approved by both the city and the state as a zone project to qualify for the exemption.

One-time exemption per property. Only one five-year exemption is allowed with respect to the property that is purchased, leased or improved. Once an exemption is allowed with respect to a particular piece of property, that same property is not eligible for another exemption under the Act.

An exemption that is allowed with respect to a particular piece of property attaches to that property. If the property is subsequently sold or leased to another taxpayer, the remaining portion of the five-year exemption period transfers with the property.

Determining zone business income.

The exemption only applies to the portion of the total income that is attributable to the business real property that received zone project approval. To determine this amount, the total income for the tax year derived from the business must be

multiplied by a zone apportionment factor. In general, the factor is a ratio equal to the average value of the business property that received zone project status divided by the average value of the total property of the business. For this purpose, "property" means all real and tangible personal property used in the business in North Dakota.

Tax credits

The following three incentives are in the form of a tax credit:

- ! Individual income tax credit up to \$10,000 per year for five years for purchasing a single-family residence as the primary place of residence. For this purpose, the primary place of residence means an individual's legal residence (or domicile).
- ! Income tax credit equal to 50% of the amount invested to preserve or renovate historic property, with a five year carryforward of an excess credit.
- ! Income tax credit equal to 50% of the amount invested in a renaissance fund corporation, with a five year carryforward of an excess credit.

Short form method

If the taxpayer is an individual, estate or trust, the income exemptions and tax credits are allowed in determining the North Dakota income tax under the short form method.

New supplemental schedule

A new supplemental schedule to the income and financial institution tax returns is being developed by the Office of State Tax Commissioner. Taxpayers must complete and attach the new schedule to their North Dakota tax returns to claim any of the tax incentives. The new schedule should be available by the end of this year. The new schedule will be part of a booklet that will provide a detailed explanation of each of the tax incentives, including administrative guidance on calculating the exemptions and credits, and the procedures for claiming them.

For more information on the renaissance

Practical stuff . . .

Assembly of individual returns

Assembling the individual income tax return in the following manner will help accommodate its speedy processing and proper storage:

- ! Except for the check or money order, staple all documents together in the **upper right-hand corner**.
- ! Enclose the check or money order with the return—**do not staple it to the return**—or attach it to the front of the return with a paper clip.
- ! Assemble the return and all applicable documents in the following order:
 1. Form 37-S or 37;
 2. If Form 37-S is used, Adjustment Schedule (Form 37-S);
 3. If Form 37 is used, Schedule 2 or Schedule 3;
 4. All other state schedules—first in numeric order, then in alphabetic order;
 5. Form W-2s (and Form 1099s showing North Dakota withholding);
 6. Copy of federal tax return and applicable attachments (or Federal TeleFile Tax Record, if applicable);
 7. Supporting statements that are required to be attached;
 8. Copy of other state's return, if Schedule 4 is attached; and,
 9. Copy of extension form, if extension box is checked on return.

Must have SSNs for both spouses

Please make sure that the social security numbers of **both** spouses are entered in the appropriate boxes at the top of the North Dakota individual income tax return. This applies whether the return is prepared on a joint or separate basis. Omitting one or both numbers, or entering an incorrect number, will delay processing of the return.

Tax credits for charitable contributions

Two new schools were added to the list of private, nonprofit institutions of secondary education for purposes of the tax credit allowed under North Dakota income tax law. They are:

- ! Prairie Learning Education Center, Raleigh, ND
- ! Trinity Christian School, Williston, ND

Form 38 filers: ESBT treatment

In the case of an electing small business trust (ESBT) consisting of stock in one or more S corporations, the S corporation income and the federal income tax on it are calculated separately from the ESBT's other income. The specific line instructions to Schedule 1 (Short Method) and Schedule 2 (Long Method) on Form 38 do not account for the S corporation items. When completing Form 38, the S corporation items of income, expense, etc., and the separately calculated federal income tax must be included where applicable when completing either Schedule 1 (Short Method) or Schedule 2 (Long Method).

ND withholding from state unemployment payments

If you have a client who receives unemployment benefits from North Dakota, be sure to check whether any North Dakota income tax was withheld from the benefits.

Also, if a recipient of unemployment benefits elected to have North Dakota income tax withheld from the benefits, Job Service North Dakota provides a statement to that recipient showing the amount of North Dakota income tax withheld for the year. A copy of this statement must be attached to the North Dakota income tax return to support the amount claimed on the return.

Your questions and comments are welcome

Your day-to-day, hands-on experience in the accounting and tax environments, and your dealings with North Dakota taxpayers, make you a valuable resource.

Your input helps us to provide the best service possible, and we invite you to contact us any time.

Thank you.

Where to reach us...

Phone numbers

General toll free **1-800-638-2901**
(from within North Dakota)

Individual income tax	(701)328-3450
Income tax withholding	(701)328-3125
Withholding toll free	1-877-638-2966
Corporation income tax	(701)328-2046
Sales and special taxes*	(701)328-3470

(*Includes sales, use, motor fuels, estate, city lodging, highway contract privilege, and music or dramatico-musical composition performing rights taxes.)

Oil and gas taxes	(701)328-2014
Property tax	(701)328-3127
Commissioner's office	(701)328-2770

Speech/hearing impaired—
Call Relay North Dakota 1-800-366-6888
(ask for 1-800-638-2901)

Internet web site www.state.nd.us/taxdpt

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Comments?

If you have suggestions for articles, or would like to comment on this publication, you may direct them to:
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